

United States' Pro Slavery Constitution

A Unit of Study for Grades 8 - 12

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RATIONALE

The purpose of this unit is to shed new light on an old subject. Students study the Constitution throughout their school career and need to realize that there is more to the Constitution than memorizing the amendments. By putting a new twist in studying the Constitution, students will become more engaged with increased interest.

Students need to understand that slavery was ingrained in our society from before the beginning of our new nation. Slavery is brought up in the classroom but usually around the time of the Civil War. Students need to know that slavery was an issue from the time the colonies decided to break away from Great Britain and before. In addition this illustrated that the even though many of the Founding Fathers talked of getting rid of slavery, after the creation of the Constitution it became that much more difficult, for slavery was protected by the Constitution in many ways.

Nevada State Standards

Civics

- 3.8.1 Give examples of governmental powers (such as the power to tax, declare war, and issue drivers' licenses) that are distributed between the state and national governments.
- 3.8.2 Define "federalism."
- 4.8.3 Identify the impact of interest groups on the political process.

Geography

- 2.8.5 Explain the role regions have played in selected historical events.
- 6.8.1 Explain how different characteristics of people, places, and resources have affected events and conditions in the past.

History

- 2.8.1 Frame historical questions that examine multiple viewpoints.
- 2.8.2 Evaluate sources of historical information based on:
- 6.8.6 Identify the Articles of Confederation.
- 6.8.7 Explain why the Constitution was written.

Objectives

There are several objectives that I feel that are to be given the utmost consideration when teaching this unit content. These are:

- Writing skills
- Reading skills
- Motivation
- Develop or improve critical thinking skills

At the end of this unit, students will be able to:

- Distinguish and evaluate bias in historical documents.
- Discuss major arguments for and against the Articles in the Constitution.
- Gain a better understanding of the ratification debates.
- Identify the positions of specific states regarding crucial conflicts during the Constitutional Convention.
- Interpret past events and issues within the context in which an event unfolded rather than solely in terms of present day norms and values.
- Gain historical empathy by demonstrating multiple perspectives.
- Demonstrate historical empathy by presenting and hearing arguments from both sides.

Chronological Content Outline

This unit is designed to be an addition to your regular Constitution unit plan. To help carry out the objectives and strategies in this unit; a list of reference materials will help meet such need. The use of the reference materials listed in this unit will prevent teachers from wasting too much of their valuable time, help design and plan better units, and improve their knowledge about historical events regarding slavery and its impact in the development of the American society.

Teaching this pro slavery Constitution unit by and of itself would be unfair to the United States Constitution. If the focus was strictly on how the US Constitution is/was pro slavery the Constitution would take on a far new meaning. Teaching the Constitution is an important facet of United States History and students must see that it was full of compromises, some good, and some bad.

This unit can be incorporated in your regular Constitutional unit in a number of ways. Depending on how the Constitution is taught will determine how this unit will be used. Time and how much detail the Constitutional unit covers will be the deciding factor. If this unit were incorporated during the regular Constitutional unit plan, more time and more detail would be needed. This unit could be incorporated during the study of the compromises, to show what each side was after. After all the compromises are discussed, decide who got the better deal, the North or the South.

Another way to incorporate this unit would be after the regular unit on the Constitution as outlined below.

Some ideas that may work to get students to look at the Constitution in a different way and try to understand the differences and conflicts in the United States:

- Have students rewrite the passages to the Constitution in their own words that have a direct link to slavery. On their own, see if the students can find the connection to all these Articles.
- Have students find other references in the Constitution to slavery, or other Articles that would benefit the South and/or slavery.
- Have students read the different compromises that were made to create the Constitution.
- Have students read sources that detailed the arguments the states had over slavery.
- Have students break into groups and prepare to debate the different states' opinions.
- While in their groups have students write their own compromises.
- Have students write a one-page opinion paper on what all these references to slavery say about the Constitution. Was the Constitution pro slavery and did the Northern states give in to preserve the Union?

Teaching Strategies

This unit lends a few teaching strategies to effectively engage students. To begin the unit an inquiry on what is in the Constitution but is not explicitly spelled out. This unit can be taught after the regular unit on the Constitution, so students will have some knowledge on the Constitution. They will probably be able to come up with how slavery is protected but not directly spelled out, particularly with the three-fifths compromise. After they have successfully grasped the idea that slavery is/was protected by the Constitution the discussion can continue on other ways the Southern states protected their peculiar institution. Most likely, the students will come up with other direct links to slavery.

The inquiry model is designed to teach students to engage in reasoning, to express themselves, to be precise in asking questions, build concepts and hypotheses, and test them. Stuart Foster and Charles Padgett state that historical inquiry enables students “to make sense of competing perspectives, to evaluate arguments based on available evidence, and to reach informed decisions” (358). With the inquiry model students will research what the delegates at the Constitutional Convention said and meant and develop their own hypotheses concerning the idea of the United States' Constitution being pro slavery.

A strategy to follow the inquiry model would be the structured discussion. As a class, they have defined and clarified the problem. The indirect references to slavery that were brought up in the earlier discussion, did that make the Constitution pro slavery. From here, students can get in groups and formulate their

own hypotheses. Students will examine primary sources such as eyewitness accounts, historical documents, letters, journals, artifacts, and other records from the past. From these documents students will discover on their own if they believe the South was given too much in the Constitution.

By using structured discussion, students become engaged in trying to discover something that is there but needs some critical thinking. Therefore, with structured discussion, similar to what Socrates did, thorough questioning of the students, probing for understanding, helping the students develop their own thinking skills. The purpose is to lead the students in a critical analysis of the Constitution, from the implicit to the explicit.

CONTENT ESSAY

Introduction

The word slavery is used only once in the United States Constitution, but that does not appear until the ratification of the Thirteenth Amendment in 1865. This amendment abolished slavery after the Civil War. The Constitution refers to slaves as “persons” or “other persons.” Even though slavery is not mentioned in the original Constitution, it is the Southern slaveholding states, which gained the most.

Importation of slaves

In 1592, a Dutch ship arrived in Jamestown with the first Africans were traded for supplies. Within sixty years of the arrival of the first Africans, slavery would be firmly established in American culture (Chronology). It was the beginning of an institution that would forever foreshadow America’s history.

By 1660, Africans made up 25% of the population in the New World (Greene). Though the majority of imported Africans lived in the South because of the agricultural economy – tobacco in Virginia and Maryland; rice along the coasts of South Carolina and Georgia – slavery factored heavily in the economies of all British North American colonies. Blacks were of so much importance because it was far cheaper to acquire Africans than to hire laborers and by 1710, the African population had increased to over 36% (Greene).

Narrative

“The word slave is not mentioned (in the Constitution) because the northern delegates, owing to their particular scruples on the subject of slavery, did not choose the word slave to be mentioned.” Southerners did not want to antagonize the Northerners and as long as the institution of slavery was protected, they were willing to do without the word slave or slavery (Finkelman, *Garrison’s Constitution*, 233). Although the word slave is not mentioned in the Constitution, there are direct and indirect references to slaves and slavery. Four provisions that dealt directly with slavery:

Three-fifths Compromise (Article I, Section 2, Paragraph 3)

The first impact on slavery that benefited the South was for representation in Congress:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons...

The argument at the beginning of the Constitutional Convention was whether or not slaves were going to be counted toward representation in Congress. Delegates from South Carolina demanded full representation for slaves because they were “the labourers, the peasants of the Southern States” they were just as productive as laborers in the North; therefore they should be counted (Rakove, 73). Massachusetts delegate Elbridge Gerry countered that blacks are property and are used just as horses and cattle are used in the North; and why should the representation of the South be increased when horses and oxen are not counted in the North (Maltz, 44). After much debate, the delegates decided to count slaves in the three-fifths formula. The three-fifths compromise granted the Southern states the ability to count slaves to determine how many Congressional Representatives the state would send to the House of Representatives.

The Constitution declared that the slave population was to be counted at sixty percent and added to the number of free citizens. This allowed slaves to be counted toward the representation in Congress. As a result, the slave states gained greater representation and thus a disproportionate influence in the federal government (Finkelman, *An Imperfect Union*, 25).

The idea of counting three-fifths of the slaves emerged five years before the Constitutional Convention. Under the Articles of Confederation, representation in Congress was based on state equality and taxation was based on the value of land. In 1783, Congress recommended that an amendment be added making population the basis for apportionment of taxes among the states. The amendment failed, but it was during this that the compromise of counting slaves using the three-fifths formula was founded. James Wilson of Pennsylvania asked the Convention to adopt the same standard as the proposed amendment for the Articles of Confederation: counting sixty percent of the slave population toward representation in Congress (Ohline, 564).

Prohibit the Ban on Importation of Slaves (Article I, Section 9, Paragraph 1)

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Referred to as the Slave Importation Clause, this Article prohibited Congress from banning the importation of slaves, *The Migration or Importation of such Persons*, for the next twenty years or until 1808. South Carolina delegate Rawlins Lowndes argued, "Without Negroes, this state would degenerate into one of the most contemptible in the Union" (Kaminski, 168). Georgia and South Carolina argued that they could not do without the importation of slaves because they needed to replenish slaves that were lost during the Revolution.

"Virginians saw the Slave Importation Clause as allowing the federal government to end slavery ... that slavery would die without the trade" (Finkelman, 29). Mr. Iredell of North Carolina believed "It was the wish of a great majority of the Convention to put an end to the trade immediately" (Kaminski, 199). Without additional slaves being brought in, slavery would gradually cease to exist and Blacks would be freed.

Although there was no specific clause that insured against the freeing of slaves, supporters of the Constitution believed that the structure of the government itself would prohibit the banning of slavery after the year 1808 (Finkelman, *An Imperfect Union*, 28). General Charles Cotesworth Pinckney of South Carolina stated that the national government could never free the slaves because there is no expressly granted powers in the Constitution that allows them to do so (Finkelman, 30). John Rutledge of South Carolina, along with other proslavery Southerners, believed that with another 20 years of legal slave importations and the population of the South moving West, by 1808 slavery would be beyond any reach of an amendment to the Constitution (Rakove, 91).

Direct Tax (Article I, Section 9, Paragraph 4)

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

This clause states if Congress ever approved a tax levy based on a fixed amount per person (poll tax) or "other direct tax" that the tax would have to take into account the three-fifths clause. It ensured that if a tax on people were ever enacted slaves were to be taxed at three-fifths of that of a white person (Finkelman, *Garrison's Constitution*, 233). This was to prevent Congress from instituting a "head tax on slaves to encourage their emancipation" (Wiecek, 73).

Fugitive Slave Clause (Article IV, Section 2, Paragraph 3)

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

This Article was to prohibit slaves from being “harbored and protected in the Northern states and thus becoming free” (Kaminski, 179). At the Virginia ratifying convention, James Madison explained, “this clause secures us that property which we now possess” (Kurland, *Debate*). Under the Articles of Confederation if any slave had run away to one of the states where slaves were free, they would have become emancipated by their laws. This clause was expressly inserted, to enable slave owners to reclaim their property (Kaminski, 187-188).

Other clauses in the Constitution benefited both the Northern and Southern states. However, some of these clauses were included primarily to protect the interests of slaveholders, such as prohibiting the tax on exports. Others were written with slavery in mind, such as the creation of the Electoral College. Below are six indirect protections of slavery (Finkelman, *Garrison*, 231).

Amending the Constitution (Article V)

...Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States...Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article...

According to Article V the Constitution would have to be approved by three fourths of the states in the Union before any changes. The South wanted to make sure that the provisions that were fought for, particularly the slave trade and direct taxes could not be changed (Wiecek, 63). Southerners believed they would always have enough states in the Union to prohibit any attempt to change the Constitution that they believed to be harmful to slavery.

Prohibit Tax on Exports (Article I, Section 9, Paragraph 5 and Article I, Section 10, Paragraph 2)

*No Tax or Duty shall be laid on Articles exported from any State.
No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports...*

These two clauses prohibited individual state governments or the federal government from implementing a tax on exports. The purpose of this Article was to prevent any possibility of applying the power to put taxes, or regulate commerce, that would injure “the interests of any one state, so as to favor or aid another.” If Congress were allowed to place a duty “on exports from any one state it might unreasonably injure, or even destroy, the staple productions, or common articles of that state” (Kurland, *Joseph Story*). Connecticut’s representative, Oliver

Ellsworth, argued that a tax on exports could be seen as an indirect tax on slavery. Most of the products produced in the south, tobacco, rice, indigo, and cotton, were made using slave labor and such a tax “would be partial and unjust” (Finkelman, *Garrison’s Constitution*, 239).

Presidential Election (Article II, Section 1, Paragraph 2)

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress...

Most delegates believed the executive branch of the government would be elected just as governors were, by the people. Hugh Williamson argued, “Virginia’s leaders would never be elected President because her slaves will have no suffrage” (Finkelman, *Garrisons*, 238) The population in the Northern states outnumbered that in the Southern states, almost guaranteeing that a Southern President would never be elected. The creation of the Electoral College got adjusted for the population differences of the North and South.

Under the Electoral College system each state receives electoral votes equal to the total number of representatives in the House plus two Senators. Remember that the House of Representatives are apportioned to population of each state; in the Southern states this includes three-fifths of the slave population. The South was still outnumbered by total electoral votes versus the North but it gave the Southern states a fighting political chance in electing a Southern president. As a result of the Electoral College, a Southerner held the office of President 32 of the first 36 years.

Domestic Violence and Insurrections (Article I, Section 8, Paragraph 15, Article IV, Section 4)

Art I, Sec 8, Par 15 To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.

Art IV, Sect 4 The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article 1, Section 8, Paragraph 15 has to do with domestic violence and insurrection, giving the national government power to call out the military when necessary. The second Article gives the states an additional security. Besides use of their own military, the state governments can request national military (Kurland, *Debate*). The South saw this as a way to guarantee federal support in the event of a slave revolt that could not be controlled locally (Maltz, 40). Southern states also saw this as a way for Northern militias to help in “suppressing black uprisings” (Wiecek, 81). Although this would benefit all of the states in the Union, the South saw this as a way free states would assist them in the event of slave revolts.

In Federalist 43 James Madison suggested another use for the domestic violence clause of Article IV. Madison believed that this clause could be used to “repress nonviolent, extralegal attempts by blacks to secure political power for themselves. May it not happen that the minority of CITIZENS may become a majority of PERSONS, by the accession of ... those whom the constitution of the State has not admitted to the rights of suffrage?” If Blacks ever gained enough strength and power, and tried to use this strength and power, this clause in the Constitution would enable the government quell any notion of Blacks fighting for their rights.

Conclusion

The Founding Fathers when they created the Constitution had to know that the issue of slavery was far from over. Even though there is not a direct reference to slaves and slavery in the United States Constitution, how serious were the framers in their efforts to get rid of slavery? Many references kept slavery alive, and compromises kept slavery a part of the United States. If the Founders had truly wanted to abolish slavery, would they have included so many provisions in the Constitution that gave the Southern states almost a stranglehold on this new country?

Annotated Bibliography

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Finkelman, Paul. "Garrison's Constitution: The Covenant with Death and How It Was Made." *Prologue: Quarterly of the National Archives and Records Administration* 32 (2000): 230-245.

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Kaminski, John P. ed. *A Necessary Evil? Slavery and the Debate Over the Constitution*. Madison: Madison House Publishers, 1995.

Complete documentation on the issue of slavery from the beginning of the war for independence through the ratification and early implementation of the Constitution.

Kurland, Philip B., and Ralph Lerner, eds. <http://press-pubs.uchicago.edu/founders/> 1987.

Primary sources that documented the arguments for and against the Constitution are arranged according to broad themes or problems. Also arranged by article, section, and clause of the U.S. Constitution, from the Preamble through Article Seven and the first twelve Amendments.

- *Debate in Virginia Ratifying Convention*
- *Joseph Story, Commentaries on the Constitution*

Maltz, Earl M. "The Idea of the Proslavery Constitution." *Journal of the Early Republic* 17 (1997): 37-59.

Reexamines the impact slave states had on the creation of the US Constitution of 1787. Many critics rightly conclude that sectional disputes divided the convention and that slave state delegates won important concessions for the pro slavery Southern states.

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This book explores the original intent of the Founding Fathers. Excellent book to explore and explain what the intent of the Fathers were when they were writing the Constitution.

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This is a complete collection of the papers written by James Madison, Alexander Hamilton, and John Jay to urge the ratification of the Constitution.

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This web site is an excellent online resource for Constitutional and early United States government resources. Contains information on the Constitution, compromises that were made, information on the framers, timelines, frequently asked questions concerning the Constitution, forums, etc. Great teacher and student resource.

United States Constitution.

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